

## **REMARKS**

The present amendment and remarks are in response to the Final Office Action entered in the above-identified case and mailed on July 9, 2009. Claims 1-37 are pending in the application. Claims 15-37 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 1, 8-15, 20-26 and 32-37 were rejected under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent No. 7,086,009 to Resnick, et al. (hereafter “Resnick”). Claims 2-7, 16-19 and 27-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Resnick in view of U.S. Patent No. 5,485,600 to Joseph et al. (hereafter “Joseph”). With respect to each ground for rejection Applicants traverse. Applicants respectfully ask the Examiner to reconsider the rejections, withdraw the final rejection and allow the claims to issue.

### **Rejections Under 35 U.S.C. §101**

In Applicants, previous response filed March 23, 2009 Applicants amended independent claims 15 and 26 to recited statutory subject matter. Claim 15 as amended in the previous response calls for a computer readable medium on which a graphic display editor is stored. The graphic display editor is provided for use in a process plant to create a graphical display that represents the operation of one or more entities within the process plant. The Patent Office has recognized that when functional descriptive material is recorded on some computer readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. (See, Interim Guidelines FDR Examination of Patent Applications for Patent Subject Matter Eligibility, Annex IV, O.G. Notices, 22 Nov. 2005). Therefore, claim 15 as amended in Applicants previous response, is properly directed toward statutory subject matter.

Also in the previous response, independent claim 26 was amended to call for a graphical display device that includes, among other things, a processor and a plurality of graphical objects adapted to be executed by the processor, as well as a graphical display object also adapted to be executed by the processor. The graphical display object includes the plurality of graphical objects, wherein the graphical objects are interconnected together within the graphical display to form a visual representation of at least a portion of the process plant that may be displayed on the display device when the graphical display is executed by the processor. The graphical display device as now claimed in amended claim 26 comprises an article of manufacture which should pass statutory muster under 35 U.S.C. §101.

In paragraph 1 of the Final Office Action mailed July 9, 2009, however, the Examiner maintains the 35 U.S.C. §101 rejections. The Examiner states that claim 15 recites a graphic display editor which fails to fall within one of the four statutory categories of subject matter of a process, machine, manufacture or composition of matter, and therefore is non-statutory subject matter. Similarly, in paragraph 2 of the Non-Final Office Action mailed July 29, 2009, the Examiner states that claims 26-37 recite a graphical display, which would fall under the statutory category of a machine, however the claims are directed toward a process and therefore not supported by a specific and substantial asserted utility.

From the above statements it is clear that the Examiner did not consider Applicants amendments to claim 15 and 26 submitted in the previous response filed March 23, 2009. Because the Examiner has not considered the amendments made in Response to a Non-Final Office Action, Applicants respectfully submit that a Final Rejection at the present stage of prosecution is improper, and should be withdrawn. Applicants therefore request that the

Examiner withdraw the Final Rejection of amended independent claims 15 and 26 and  
Examine the amended claims on the merits with respect to 35 U.S.C. §101.

Applicants note that, while independent claims 15 and 26 were amended in the  
previous response, dependent claim 16-25 and 27-37 were not, raising various antecedent  
issues. This oversight has been corrected in the present response. Dependent claims 16-25  
and 27-37 have been amended to correspond to the changes made to the independent claims  
in the previous response.

#### **Rejections Under 35 U.S.C. §102(e)**

With the present response Applicants have amended independent claims 1, 15 and 26.  
Each now calls for, in one form or another, a routine that operates in conjunction with a  
graphic or visual representation or a graphical object to alter the manner in which the graphic  
or visual representation of the graphic object is displayed according to the value of a property  
associated with a process entity represented by the graphic or visual representation or the  
graphic object. Such a feature is not disclosed by Resnick. Therefore independent claims 1,  
15 and 26 and the claims pending therefrom are not anticipated under 35 U.S.C. §102(e) and  
should be allowed.

#### **Rejections Under 35 U.S.C. §103(a)**

Claims 2-7, 16-19 and 27-31 rejected under 35 U.S.C. § 103(a) each depend from  
independent claims 1, 15 or 26. As described above, claims 1, 15 and 26 have been amended  
to include a routine that operates in conjunction with a graphic or visual representation or a  
graphic object to alter the manner in which the graphic or visual representation or the graphic  
object is displayed according to the value of a property associated with a process entity

represented by the graphic or visual representation or the graphic object. As argued above, Resnick does not teach all of the features of independent claims 1, 15 and 26. Specifically Resnick does not teach a definition routine adapted to enable a user to define a routine that operates in conjunction with a graphic representation of one of the graphic objects and a property associated with a process entity associated with the graphic representation, nor does Resnick teach a routine that operates in conjunction with a graphic representation of the process entity to alter the manner in which the graphic representation of the process entity is displayed to the user.

Joseph, on the other hand is cited as teaching various features of the dependent claims. For example, with regard to claims 3, 17, and 28 Joseph is cited as teaching an animation routine that animates a graphic representation in a continuous manner. With regard to claims 4, 18, and 19 Joseph is cited as teaching an animation routine that applies skew, rotation and resizing to a graphic representation. With regard to claims 5, 19, and 30 Joseph is cited as teaching a color animation, a color gradient animation, opacity animation, or a font characteristic, or a video property of the graphic representation. Finally, with regard to claims 6 and 31 Joseph is cited as teaching graphic representations that include two or more primitives and a routine that changes a property of one of the primitives.

Applicants argue that Joseph does not in fact teach the features of the dependent claims identified by the Examiner. However, even assuming *Arguendo* that the reference does teach these features, neither Resnick nor Joseph teach a definition routine adapted to enable a user to define a routine that operates in conjunction with a graphical representation of one of the graphic objects and property associated with a process entity. Since-n-either Resnick nor Joseph teach this feature of the independent claims, it follows that the combined

teaching of Resnick and Joseph does not teach or suggest all of the features of any of the dependant claims. Accordingly claims 2-7, 16-19 and 27-31 are not obvious over Resnick and Joseph and should be allowed.

### **CONCLUSION**

For the foregoing reasons, Applicants respectfully submit that all of the claims pending in the application are now in condition for allowance. If the Examiner has any questions regarding the present response he is encouraged to call the Applicant's attorney at the number provided below.

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Respectfully submitted,

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